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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Mark Branon, ) No. 04-CV-1698-PHX-FJM  
10 Plaintiff, ) **ORDER**  
11 vs. )  
12 )  
13 Larry Debus, et al., )  
14 Defendants. )  
15 \_\_\_\_\_ )

16  
17 **I**

18 Pursuant to our order docketed October 11, 2005 (doc. 74), all claims were dismissed  
19 as to defendant Estate of Thomas A. Thinnies and defendant Bruce Lowe; the 42 U.S.C. §§  
20 1983 and 1985, and fraud claims were dismissed as to defendant Robert Owens; and the §§  
21 1983 and 1985, legal malpractice, and fraud claims were dismissed as to defendants Larry  
22 Debus and Debus, Kazan & Westerhausen Ltd. ("Debus Defendants"). The conversion  
23 claims against Debus Defendants and defendant Owens remain, and 28 U.S.C. § 1332 is the  
24 sole remaining basis for jurisdiction. Accordingly, we requested the parties to brief the issue  
25 of whether diversity of citizenship exists. Order at 8 (doc. 74). We therefore have before us  
26 Debus Defendants' Motion to Dismiss (doc. 75) and defendant Owens' joinder thereto (doc.  
27 76), plaintiff's Response (doc. 79), defendant Owens' Reply (doc. 82), Debus Defendants'

1 Reply (doc. 84), and plaintiff's Further Response (doc. 86).<sup>1</sup> We also have before us  
2 plaintiff's Motion to Extend Time to Fully Oppose the Motions to Dismiss (doc. 80) and  
3 defendant Owens' Response (doc. 83); and defendant Estate of Thomas A. Thinnes'  
4 unopposed Motion for an Order Authorizing Entry of Final Judgment Against the Estate  
5 (doc. 77) and Defendant Lowe's joinder thereto (doc. 78).

## 6 II

7 Debus Defendants filed their motion to dismiss for lack of subject matter jurisdiction  
8 on October 21, 2005. Therefore, plaintiff had until November 23, 2005, which includes the  
9 30 day response period and the 3 day mailing period, to file a response. LRCiv 7.2(c), 12.1,  
10 56.1. Plaintiff and defendants appear to have mistakenly relied upon the shorter response  
11 period of LRCiv 7.2(c). Accordingly, plaintiff's declaration filed November 21, 2005 was  
12 timely filed. We therefore deny as moot plaintiff's motion for a time extension (doc. 80).

## 13 III

14 Plaintiff asserts that we have diversity jurisdiction because the matter in controversy  
15 exceeds \$75,000 and it is between citizens of different states. 28 U.S.C. § 1332; Second  
16 Amended Complaint at 12. To show state citizenship for diversity purposes, a person must  
17 be a citizen of the United States and be domiciled in that state. Kantor v. Wellesley  
18 Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983). "A person's domicile is her permanent  
19 home, where she resides with the intention to remain or to which she intends to return."  
20 Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). The diversity is required  
21 at the time the lawsuit is filed. Lew v. Moss, 797 F.2d 747, 750 (9th Cir. 1986). The party  
22 asserting diversity bears the burden of proof. Id. at 749. On a challenge to allegations of  
23 jurisdictional facts, that party must support those allegations by competent proof. 15 James  
24 Wm. Moore et al., Moore's Federal Practice § 102.14 (3d ed. 2005).

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27 <sup>1</sup> We consider plaintiff's Further Response to Debus Defendants' Reply to the extent  
28 that it responds to the exhibits that were newly introduced in Debus Defendants' Reply.

1 Plaintiff asserts that he is a citizen of the state of California. From this, we infer that  
2 plaintiff believes himself to be a citizen of the United States, but plaintiff fails to assert  
3 United States citizenship directly. Plaintiff sets forth declarations by plaintiff's attorney,  
4 Roger Hanson, a letter from plaintiff's mother, Dolores Branon, and a declaration by plaintiff,  
5 all of which essentially state that plaintiff moved to California with his family when his  
6 father was transferred there with the United States Navy; that plaintiff attended high school  
7 in California; that plaintiff lived in California except for the periods in which he lived in  
8 Mexico and Arizona; that plaintiff lived in California when he was arrested; and that plaintiff  
9 has since been incarcerated in Arizona and California. Response to Motions to Dismiss at  
10 3-6, Response to Motions to Dismiss, Exhibit 1; Declaration of Mark David Branon at 1.

11 Defendants argue that plaintiff is domiciled in Arizona, and that plaintiff has not  
12 satisfied his burden of proving that plaintiff is domiciled in California. Motion to Dismiss  
13 at 1-2; Joinder at 2. Defendants also submit evidence that plaintiff's spouse, Shawna Branon,  
14 who recently petitioned for dissolution of the marriage, owns a home in Arizona. Debus  
15 Defendants' Reply, Exhibit 1. Shawna Branon declared this property to be community  
16 property, but purchased it in her own name. Id.; Plaintiff's Further Response, Exhibit 2.

17 Plaintiff had from October 11, 2005, when we asked parties to brief the jurisdictional  
18 issue, until November 23, 2005, when plaintiff's response was due, to gather evidence to  
19 prove the jurisdictional facts. Plaintiff fails to submit any evidence—such as a drivers license,  
20 voter registration card, utility bills, or tax returns—to corroborate plaintiff's self-serving  
21 declarations and failed to timely request an extension of time to gather and submit this  
22 evidence. Moreover, declarations submitted by plaintiff suggest that plaintiff has resided in  
23 California, Arizona, and Mexico at various times prior to the filing of this action, and even  
24 state that defendant had been "occupying domiciles from time to time in Arizona." Response  
25 to Motions to Dismiss at 4. Accordingly, while it is possible that defendant was a citizen of  
26 California at the time of the filing of this action, we conclude that plaintiff failed to prove the  
27 requisite jurisdictional facts, and therefore we dismiss this action for lack of subject matter  
28

jurisdiction (docs. 75, 76).<sup>2</sup> Plaintiffs' incarceration in Arizona had no effect on this determination.<sup>3</sup>

**IV**

**IT IS ORDERED GRANTING** Debus Defendants' Motion to Dismiss for lack of subject matter jurisdiction (doc. 75).

**IT IS FURTHER ORDERED GRANTING** Robert Owens' Motion to Dismiss for lack of subject matter jurisdiction (doc. 76).

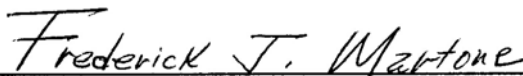
**IT IS FURTHER ORDERED DENYING** as moot defendant Estate of Thomas A. Thinnes' Motion for an Order Authorizing Entry of Final Judgment (doc. 77).

**IT IS FURTHER ORDERED DENYING** as moot defendant Bruce Lowe's Motion for an Order Authorizing Entry of Final Judgment (doc. 78).

**IT IS FURTHER ORDERED DENYING** as moot plaintiffs' motion for an extension of time (doc. 80).

All matters having been decided, the clerk is directed to enter final judgment.

DATED this 19<sup>th</sup> day of January, 2006.

  
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Frederick J. Martone  
United States District Judge

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<sup>2</sup> Due to the early stage of this litigation, and because we have dismissed all federal claims, we decline to exercise supplemental jurisdiction over the remaining state claims. 28 U.S.C. § 1367(c)(3). State court is the appropriate forum for those claims.

<sup>3</sup> Plaintiff failed to establish his California citizenship, and therefore we need not consider the effect that plaintiffs' incarceration in Arizona would have on that citizenship. However, we agree that a prisoner's incarceration in a different state does not, without the requisite intent to remain, alter his citizenship. See, e.g., Singletary v. Cont'l Illinois Nat'l Bank and Trust Co. of Chicago, 9 F.3d 1236, 1238 (7th Cir. 1993); Jones v. Hadican, 552 F.2d 249, 250 (8th Cir. 1977).